



BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 1997-0239-C

SA-5

SC Public Service Commission
Communications Section

2004 OCT 14 PM 4:09

In Re:)
)
Proceeding to Establish Guidelines)
for an Intrastate Universal Service)
Fund)

SOUTH CAROLINA CABLE TELEVISION
ASSOCIATION'S PETITION FOR REHEARING
OR RECONSIDERATION OF
ORDER NO. 2004-452

The South Carolina Cable Television Association ("SCCTA") respectfully submits this petition for rehearing or reconsideration in the above-captioned matter pursuant to S.C. Code Ann. Section 58-9-1200 and 26 S.C. Regs. 103-881. SCCTA respectfully petitions the Public Service Commission of South Carolina ("Commission") to rehear and reconsider Order No. 2004-452 dated September 28, 2004 ("Order"). In Support SCCTA would show the following:

1. SCCTA intervened as a formal party of record in this docket.
2. In Order No. 2004-452, the Commission approved an increase of approximately \$4.2 million in the amount of the South Carolina Universal Service Fund ("USF"). This increase was requested by the following five incumbent local exchange carriers: ALLTEL South Carolina, Inc. ("ALLTEL"); Bluffton Telephone Co., Inc. ("Bluffton"); Hargray Telephone Co., Inc. ("Hargray"); Home Telephone Co., Inc. ("Home"); Horry Telephone Cooperative, Inc. ("Horry"); and PBT Telecom ("PBT") ("collectively ILECs"). SCCTA received a copy of the Order on October 8, 2004.

3. SCCTA submits that its substantial rights have been prejudiced because the findings, inference, conclusions, and decisions are:

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- a. in violation of statutory provisions,
- b. effected by errors of law, and
- c. arbitrary and capricious.

4. Under the Commission's USF Guideline adopted in Order No. 2001-419, incumbent local exchange carriers are permitted to seek additional funding from the USF annually. SCCTA's appeal of Order No. 2001-419 which established the USF is pending in the South Carolina Supreme Court. SCCTA's appeal of Order No. 2003-215 which approved an increase of approximately \$6.6 million in the USF is pending in the Circuit Court for Richland County.

5. Because Order No. 2004-452 suffers from the same errors as previous orders in this docket, SCCTA incorporates by reference in this petition the issues on appeal in Order Nos. 2001-419 and 2003-215 and related orders. Following is a brief summary of the errors in Order No. 2001-419.

- a. The USF violates the requirements of Section 58-9-280(E)(4) because it does not establish the size of the USF and because it does not engage in the calculation required by the statute.
- b. The USF established in Order No. 2001-419 is a barrier to entry prohibited by Section 253 of the Federal Telecommunications Act of 1996 as well as S.C. Code Section 58-9-280(E).
- c. The fund is oversized because the Commission's calculation method mismatches costs and revenues in violation of Section 58-9-280(E).
- d. Order 2001-419 conflicts with federal law in that it contravenes the Federal Telecommunications Act of 1996 by assessing contributions to the state USF on interstate revenues.
- e. The USF is discriminatory in the manner in which companies that qualify as carriers of last resort may be allowed to receive funds from the USF.

In addition to the above grounds following is a brief summary of additional errors in Order No. 2003-215:

- f. The Commission's decision that the amount of additional funding requested in combination with the funding already received by the same carriers does not exceed one-third of the USF for each company without requiring the petitioners to update their cost studies violated S.C. Code Section 58-9-280(E)(4).
- g. The Commission has not established a mechanism pursuant to Section 58-9-280(E)(4) for adjusting any inaccuracies in the estimates to establish the size of the fund.
- h. The Commission erroneously permitted the petitioners to reduce intraLATA toll rates and extended area service area calling plan rates and to recover those reductions from the USF which is impermissible under S.C. Code Section 58-9-28(C)(5) & (E). Basic local exchange service is the only service expressly supported by the USF.
- i. The Commission failed to require the petitioners to provide relevant evidence of how the cost estimates of the services under analysis relate to the cost of providing any other service offered by the carrier.
- j. The Commission erroneously relied on the petitioners' own statements concerning the economic effects of rate decreases in violation of Section 58-9-280(E).
- k. The Commission violated the Due Process Clause of the Fourteenth and Fifth Amendments of the U.S. Constitution, S.C. Constitution Art. I, § 3 and IX, § 1, and unlawfully delegated the power to regulate to the petitioners in violation of S.C. Code Sections 58-3-140 and 58-9-280(E)(4).

The errors described in subparts (a) through (k) are included in Order No. 2004-452 and the SCCTA asks this Commission to reconsider its previous rulings.

6. In the current Order the Commission found that the amount of funding requested by the ILECs when combined with funding received from the first phase of the USF does not exceed 2/3 of the company-specific USF for each company. The Commission also found that the amount of USF requested by ALLTEL, Hargray, and

Horry when combined with the funding received from the first phase of the USF does not exceed 1/3 of the company-specific USF amount for each company. These findings are not supported by the evidence in this record. Since the Commission has made no determination of the total size of the USF, they cannot determine whether each company has exceeded 1/3 or 2/3 of its company specific total. Therefore, the Commission's Order violates S.C. Code Section 58-9-280(E)(4).

7. There is a fundamental flaw in the Guidelines used by the Commission to implement the phase-in USF plan. Under the phased-in plan the USF is funded in stages so that ILECs would continue to receive subsidies from implicit sources in its rates as well as the explicit funding from the USF. As evidenced by the record in this case the Guidelines provide no mechanism to determine how much implicit support is generated through the ILECs' rates. Without that information the Commission cannot accurately measure whether the ILECs are receiving the appropriate level of funding. The Order is arbitrary and capricious in holding that companies should not be required to identify the amount of implicit support in each service.

8. The Order violates the Federal Telecom Act, 47 USC. Sections 254(F) and (k), in that the Guidelines do not provide sufficient information for the Commission to prevent discrimination and cross subsidization. Since the Guidelines do not require any monitoring by the Commission of the levels of implicit support generated by various services, different services provide different levels of implicit support. If the rates charged to affiliates generate little or no implicit support in comparison to other rates then the USF is being used discriminatorily in violation of the Federal Telecom Act.

9. The Order violates S.C. Code Section 58-9-280(E)(6) in that the Guidelines do not include sufficient regulatory safeguards with respect to the submission of updated cost studies. The studies were not audited and no testimony presented by five ILECs.

10. A final decision in this matter should not have been issued until the ILECs provide the information they were ordered to produce in Order No. 2004-173 that was issued September 28, 2004. The materials were relevant to establish whether the ILECs over-recovered money from the USF.

For the reasons stated herein we request that the Commission reconsider its rulings in Order No. 2004-452 and issue an order consistent with the grounds stated in this petition.

Dated this 14th day of October, 2004.

Respectfully submitted,

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Fund

CERTIFICATE OF SERVICE

This is to certify that I am a legal assistant in the firm of Robinson, McFadden & Moore, P.C., that I have this day caused to be served upon the persons named below the PETITION FOR REHEARING OR RECONSIDERATION in the above captioned matter by placing a copy of same in the United States Mail, postage prepaid, in envelopes addressed as follows:

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A handwritten signature in cursive script, appearing to read "Mary F. Cutler", written over a horizontal line.

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October 14, 2004